

## **SENATE ESTIMATES BRIEF**

Group Top Issues Brief

VCDF pack

### **CIVILIAN CASUALTIES**

#### **Key Message**

- The Australian Government and the ADF takes the issue of civilian casualties very seriously and deeply regrets any loss of innocent life.
- Protecting the Afghan population is a key part of the International Security Assistance Force (ISAF) strategy to defeat the insurgency in Afghanistan.
- ISAF and the ADF take precautions to avoid harming civilians and property during operations. Our troops are deployed under strict rules of engagement designed to minimise harm to the civilian population.
- United Nations Assistance Mission Afghanistan (UNAMA) reporting (14 Jul 11) notes that over three quarters of all civilian casualties in Afghanistan were caused by the Taliban and anti-government elements.

#### **Key Issues**

- The ADF takes all reasonable steps to ensure its operations do not put the lives of civilians or non-combatants in jeopardy. The ADF is committed to being as open and transparent as possible in reporting casualty matters to the Australian Government and population.
- The insurgent's indiscriminate practice of employing landmines, improvised explosive devices, suicide attacks and assassinations continues to take a high toll on the civilian population.
- Insurgent attacks on international forces from heavily populated civilian areas also continue to place innocent Afghan lives at risk.
- Deployed ADF personnel operate under a strict set of Australian rules of engagement designed to minimise the risk of civilian casualties. Any civilian casualty matters are formally investigated and the Australian public informed of the findings as is practicable.
- For operational security reasons details of the rules of engagement cannot be discussed. To discuss the rules in public would be to give opposing forces an advantage in understanding the regulations on our tactics. The insurgents operate with no rules and with no regard for civilians.

- In situations where an individual, family or community has sustained a loss due to conflict, the ADF is able to use the Tactical Payment Scheme to make a small payment to those who have suffered as an expression of sympathy and to assist recovery in line with local custom.
- Tactical Payment Scheme payments do not imply any wrong doing by members of the ADF, nor is it an admission of guilt. Such payments are an indicator of the ADF's good faith towards the people of Afghanistan.

### **Way Ahead**

- There are five incidents involving the deaths of Afghan nationals which have been subject to inquiry and/or investigation and might be raised by the Senate committee:
  - 12 Feb 09 – complete.
  - 02 Nov 10 – subject to implementation of the recommendations arising from the completed Inquiry Report.
  - 27 Mar 11 – subject to implementation of the recommendations arising from the completed Inquiry Report.
  - 24 Jul 11 – all investigations are complete.
  - 29 Oct 11 – subject to an administrative inquiry.
- At present, only the 29 Oct 11 incident is still subject to inquiry or investigation.
- The total amount (not just for casualties) paid in Tactical Payment Scheme payments arising out of Operation SLIPPER for the period September 2009 up until 18 Jan 12 is AUD \$84,836.58 and comprises 1,474 individual payments.
- Australian soldiers will continue to exercise their right of self defence when attacked, in accordance with the rules of engagement.
- All civilian casualty incidents and claims are closely reviewed and the outcomes of Defence Inquiry Officer reports are routinely made public.

### **If asked: 12 Feb 09 incident**

- See 12 Feb 2009 Senate Estimates brief for talking points.

### **If asked: 2 Nov 10 incident**

- This incident involved a patrol comprising members of the Afghan National Army and soldiers from the Australian Mentoring Task Force.

- The patrol was involved in a series of small arms fire exchanges with insurgents in the Baluchi Valley region.
- Following the engagements, several locals approached Afghan and Australian soldiers, carrying the body of a male, who they claimed was a civilian and had been killed by small arms fire.
- A media statement was issued on 3 Nov 10, which advised that a review would be undertaken and that further information would not be provided until the internal review was complete.
  - The statement also indicated that one Afghan soldier and two insurgents were wounded (one in the initial exchange and one after the evacuation of the Afghan soldier and the insurgent).
- Following the initial assessment of the incident, the Chief of Joint Operations appointed an Inquiry Officer to examine the circumstances in more detail.
- The Inquiry Officer has submitted his Inquiry Report to the Chief of Joint Operations. The report is being reviewed for security issues prior to public release.

**If asked: 27 Mar 11 incident**

- A Defence Inquiry is underway to ascertain further details of an engagement between several insurgents and a partnered Afghan National Police Provincial Response Company-Uruzgan and Special Operations Task Group patrol on 27 Mar 11.
- The partnered patrol was engaged by small-arms fire as it approached a village in the Chora Valley region.
- It was initially reported that one insurgent was killed and a small Afghan boy was seriously injured during the engagement.
- Immediate medical assistance was provided before the child was aero-medically evacuated to medical facilities in Tarin Kot and then to Kandahar.
- On medical advice, his family agreed to remove life support for the boy as medical complications worsened.
- Unfortunately, the child succumbed to his wounds and passed away on 02 Apr 11.
- Defence released a media release on this incident.

- The Inquiry Officer submitted his Inquiry Report to the Chief of Joint Operations. The report is being reviewed for security issues prior to public release.

**If asked: 24 Jul 11 incident**

- On 24 Jul 11, during a re-supply mission to Patrol Base Wali in the Mirabad Valley, an element of Mentoring Task Force – Three (MTF-3) identified a radio-controlled improvised explosive device (IED).
- Explosive ordnance disposal technicians were called to safely disable the device.
- During this procedure, Australian soldiers identified three armed men in the vicinity of the patrol.
- One of the men was observed to be operating a device that appeared consistent with those commonly used to detonate radio-controlled IEDs.
- The men were assessed as taking an active or direct part in hostilities and as such posed an immediate threat to the Explosive Ordnance Disposal team.
- The MTF-3 element was authorised to engage the men.
- No civilians were seen in the area prior to the engagement commencing.
- A subsequent sweep of the engagement area did not find any evidence of the armed men being hit by Australian fire.
- During the sweep, a local man approached MTF-3 soldiers claiming that his 13 year old daughter had suffered a minor wound during the engagement.
- A Combat First Aider examined the child and found that she had bruising to her right arm and swelling in the right knee.
- The injuries were assessed to have possibly been caused by flying debris from the wall of a building which had been struck by ADF direct fire.
- The child's superficial injuries did not require additional treatment or medical evacuation. A follow-up patrol to check on the child and meet with her father was conducted.

**If asked: 29 Oct 11 incident**

- On 29 Oct 11, there was an incident that resulted in the death of an Afghan male in Tarin Kot.
- Australian soldiers were securing a meeting site for the Provincial Reconstruction Team (PRT) at the time of the incident. Australian soldiers

engaged and killed an Afghan male who approached the site at speed on a motorcycle and failed to adhere to all directions to stop.

- Immediate medical assistance was provided to the motorcyclist after the engagement but he was unable to be saved.
- An Inquiry Officer report is currently under legal review. A public statement on the outcomes of the inquiry is expected to follow in due course.

**If asked: Allegations by Four Corners program of 05 Sep 11**

- On 05 Sep 11, the ABC's Four Corners Program broadcast a special report investigating the merits and risks of Special Forces elements conducting 'capture or kill' activities in Afghanistan, with a particular focus on Australia's Special Operations Task Group (SOTG).
- The report aired allegations that four incidents in which the SOTG were involved resulted in unintended civilian casualties, and the murder of one detained suspect, Hayat Ustad.
- The claims that were recently canvassed by the Four Corners program were all reviewed by Defence. In each case, Defence found the ADF acted within its Rules of Engagement.
- During an operation on 29 Apr 11, Hayat Ustad, an insurgent responsible for weapons smuggling and IED construction, drew a pistol and attempted to shoot members of the Australian Special Forces who, acting in self defence, shot and killed him.
  - A Commission of Inquiry was not conducted because Defence does not consider this to be a civilian casualty incident.

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## BACKGROUND

- The International Security Assistance Force (ISAF) and the ADF take every possible precaution to avoid harming civilians and their property during the course of operations. Our intent is to reduce civilian casualties and build support among local Afghan communities. Defence works closely with ISAF and the Afghan authorities in conducting any investigations.
- The United Nations Mission in Afghanistan released its annual report on Protection of Civilians in Armed Conflict on 14 Jul 11, which indicated that 80 per cent of the 1462 civilian deaths in the first half of 2011 were attributed to Anti-Government elements (1,167), up 28 per cent from the same period in 2010. The report also highlighted that 14 per cent of civilian deaths were attributed to Pro-Government Forces, including Afghan national security and international military forces (207), a reduction of 9 per cent from the same period in 2010. The decrease reflects measures taken by ISAF to reduce the risk posed by military operations on the civilian population.
- Australian soldiers will continue to exercise their right of self defence when attacked, in accordance with our Rules of Engagement. Moreover, the Commander ISAF (COMISAF) Tactical Directive continues the long-standing ISAF focus on protecting civilians and operating in a manner that is respectful of Afghan culture. ADF force elements comply with the COMISAF Tactical Directive.
- Defence provides public information as soon as is practicable whenever there are civilian casualties, or there is significant collateral damage during the conduct of our operations. All allegations are investigated and the Australian public is informed of the findings.
- Defence can provide no-liability financial compensation for collateral damage to property, injury, or loss of life that has occurred in the course of operations. This can occur through the Tactical Payments Scheme. The Tactical Payment Scheme was legislated on 1 Jul 09, under Sections 123H and J of the *Defence Act 1903*. The scheme was introduced to provide a means for making expeditious no-liability payments. This scheme is important for maintaining local community support and thereby ensuring the safety of our troops overseas.
- The disclosure of payment caps and delegations under the Tactical Payment Scheme would jeopardise mission accomplishment and compromise force protection, given the fraught social environment in Afghanistan. It would also have the propensity to create a local economy with false claims or contrived incidents and unrealistic expectations on maximum payments.
- The scheme operates in accordance with the principles in the *Financial Management and Accountability Act 1997* to ensure the payments are an efficient, effective and ethical use of public money. Annual expenditures of this Scheme are listed in the Defence Annual Report. Specific details of individual payments made under the Tactical Payment Scheme are not made public due to operational sensitivity and privacy requirements. Disclosure could also be dangerous to the safety of the recipients.